

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Columbus, OH, Employer**

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**Docket No. 07-2434  
Issued: March 10, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 25, 2007 appellant timely appealed the August 29, 2007 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant sustained an injury in the performance of duty.

**FACTUAL HISTORY**

On April 25, 2007 appellant, a 40-year-old city carrier, filed an occupational disease claim for a recurring rash on his face, lips, eyes, ears, neck and forearms. He identified April 16, 2007 as the date he first realized his condition was employment related. Other than noting that the rash appeared during work hours, appellant did not identify any specific employment factors that either caused or contributed to his skin condition.

On April 18, 2007 appellant was diagnosed with “allergic reaction dermatitis due to a plant.” The physician subsequently explained that appellant had either plant-induced or sun-induced dermatitis. On May 4, 2007 appellant was seen by another physician who diagnosed contact dermatitis. However, when seen on July 13, 2007, the question arose again as to whether appellant had contact dermatitis or sun-induced dermatitis.<sup>1</sup>

Dr. Matthew J. Zirwas, a Board-certified dermatologist, advised in a July 13, 2007 letter that appellant would be undergoing treatment on July 19, 2007 and afterwards he would not be permitted to work in areas of excessive heat for a period of five days.

In a decision dated July 20, 2007, the Office denied appellant’s claim because he failed to establish that the diagnosed condition was employment related.

On July 25, 2007 appellant requested reconsideration. Additional information received by the Office included an undated attending physician’s report (Form CA-20) from Dr. Zirwas who diagnosed a rash of unspecified origin. He noted that, while the timing of the rash implicated appellant’s job, he was still undergoing testing to determine the exact cause of the rash.

In a report dated July 27, 2007, Dr. Zirwas indicated that dust at the facility where appellant worked was the likely cause of his recurrent rash. He explained that appellant obtained a dust sample from the Livingston postal facility, which was later used to perform a scratch test. Based on the positive test results, Dr. Zirwas concluded that the dust from the facility was the likely cause of appellant’s recurrent rash. He suspected that pollen or mold spores, which appellant was allergic to, were present in the dust. Dr. Zirwas diagnosed dermatitis and recommended that appellant not return to the Livingston postal facility. He noted that appellant could perform his full, unrestricted duties at a different facility, preferably one that was relatively new and likely to have less dust and a better air-handling system. In another undated Form CA-20, Dr. Zirwas diagnosed “contact urticaria from dust.” He advised that appellant was able to resume work on July 30, 2007, albeit at a different postal facility.

Appellant provided a statement explaining that he returned to work on July 30, 2007 at a different facility and delivered mail that day without incident. The following day, July 31, 2007, he cased and carried mail without an outbreak of the rash he previously experienced. But on August 1, 2007, appellant began to sneeze and cough after two hours casing mail. He noticed some skin irritation on his hands and arms and immediately stopped work and went to see his doctor. Appellant underwent additional testing and was told to remain off work for five days. On August 2, 2007 his rash had cleared up without him having used any medication. When appellant returned to work on August 6, 2007, he was assigned duties that did not involve working around the route cases. Since changing job duties, he reported that he had not experienced another outbreak.

In an August 8, 2007 report, Dr. Zirwas stated that he had extensively evaluated appellant, which included clinical examination, skin biopsy, photo testing and allergy testing. Until recently, he had only seen appellant’s rash in a resolving state. However, on August 1,

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<sup>1</sup> The signatures on the April 18, May 4 and July 13, 2007 reports are all illegible.

2007, Dr. Zirwas saw appellant's rash after an acute flare-up. He explained that appellant had a positive reaction to dust from the Livingston postal facility on scratch testing. While dust did not pose a substantial risk to appellant's general health, it was possible he would have symptoms such as coughing, sneezing, rash and itchy eyes if placed in a high dust environment. Dr. Zirwas indicated that sensitivity to dust was one of the contributing factors to the recurrent rash appellant experienced and that he should not be placed in high dust environments. He also explained that appellant had significant photosensitivity to sunlight. Dr. Zirwas based this assessment on his examination of the acute flare-up of appellant's rash and a skin biopsy. According to him, photosensitivity was the other major contributing factor to appellant's rash. Dr. Zirwas stated that he advised appellant to avoid exposure to excessive sunlight. He further stated that appellant should not be exposed to direct sunlight for more than 30 minutes during the peak exposure hours between 10:00 a.m. and 4:00 p.m.

By decision dated August 29, 2007, the Office denied modification of the July 20, 2007 decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>3</sup>

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>4</sup>

### **ANALYSIS**

Dr. Zirwas diagnosed dermatitis and contact urticaria from dust in the "Post Office." Appellant first realized his rash was caused or aggravated by his employment on or about

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<sup>2</sup> 5 U.S.C. §§ 8101-8193 (2000).

<sup>3</sup> 20 C.F.R. § 10.115(e), (f) (2007); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>4</sup> *Victor J. Woodhams*, *supra* note 3.

April 16, 2007. However, Dr. Zirwas did not initially examine appellant until three months after the onset of his condition. The medical diagnoses appellant initially received in April and May 2007 attributed his dermatitis to either sun exposure or plant exposure, without mention of any possible dust exposure. Several months later, Dr. Zirwas reached a different conclusion based on a scratch test using a dust sample appellant reportedly collected from the Livingston postal facility.

The testing methodology employed by Dr. Zirwas is suspect given that there is no means of verifying that the dust sample was from the employing establishment. There also was no effort to rule out other possible nonindustrial dust exposure. Dr. Zirwas' opinion that dust at the Livingston postal facility likely caused appellant's rash is undermined by the August 1, 2007 recurrence of the condition when appellant was working at another postal facility. His August 8, 2007 opinion also suggests that high dust concentration in the workplace was a causative factor. Dr. Zirwas specifically recommended that in the future appellant should "not be placed in high dust environments." However, the record is devoid of any information regarding workplace dust levels either prior or subsequent to the April 2007 onset of appellant's condition. The record does not establish that Dr. Zirwas was provided with any reliable data regarding workplace dust levels.

Dr. Zirwas' latest report also implicated excessive sunlight as a factor in appellant's condition. This clinical assessment was based in part on the doctor's observation of appellant shortly after his August 1, 2007 acute flare-up. However, appellant stated that he had been indoors casing mail for about two hours on August 1, 2007 when he began coughing and sneezing and noticed some skin irritation on his hands and arms.

The Board finds that Dr. Zirwas' opinion regarding the cause of appellant's diagnosed skin condition is at best, speculative. There is no reliable medical evidence of record linking appellant's diagnosed skin condition to his employment. Accordingly, appellant has not met his burden of proof.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained an injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 29, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board